U.S. Department of Justice

Civil Rights D. .sion

Office of the Assistant Attorney General *Washington, D.C. 20035*

March 31, 2000

R.W. Casselberry, Esq.
Fulbright & Casselberry
211 North Houston Avenue
Lamesa, Texas 79331-5441

Dear Mr. Casselberry:

This refers to two annexations (Ordinance Nos. 0-14-99 and 0-15-99) to the City of Lamesa in Dawson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on February 2, 2000.

The Attorney General does not interpose any objection to the two annexations. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

This also refers to our January 31, 2000, letter which declined to withdraw the July 16, 1999, objection interposed under Section 5 to the deannexation, by referendum, of the territory previously annexed under Ordinance No. O-06-98 of the City of Lamesa. That letter also stated the Attorney General's conclusion that it was necessary, pursuant to 28 C.F.R. 51.46, to consider the implications of the Supreme Court's recent decision in Reno v. Bossier Parish School Board, 120 S. Ct. 866 (2000), (hereafter Bossier), on the reconsideration of the objection. We have reconsidered the objection in light of the Bossier decision

and write to inform you of the results of our reevaluation.

The July 16, 1999, objection interposed under Section 5 to the city's deannexation was premised upon our conclusion, based upon our review of the available information, that the city had not met its burden of demonstrating that the deannexation had neither a discriminatory purpose nor a discriminatory effect, citing Georgia v. United States, 411 U.S. 526 (1973) and 28 C.F.R. 51.52. In support of this conclusion we noted that, in particular, the city had not demonstrated that a "discriminatory purpose to exclude minority voters from taking up residence in District 6 was not a significant factor in the decision to adopt the change."

As you know, Section 5 of the Voting Rights Act provides that covered jurisdictions, like the City of Lamesa, may not implement a change in "any prerequisite to voting or standard, practice, or procedure with respect to voting" without obtaining preclearance under Section 5. 42 U.S.C. 1973c. Preclearance may be obtained from either the United States District Court for the District of Columbia through a declaratory judgment issued by that court that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or [membership in a language minority group]," or from the Attorney General, who, as a surrogate for the D.C. District Court, applies the same legal standard. Id.; 28 C.F.R. 51.52.

In Bossier the Supreme Court construed the "purpose of abridging the right to vote" element of the above-referenced standard to mean a purpose to retrogress minority voting strength. Bossier, at 871. In its discussion (at 877-78) of City of Pleasant Grove v. United States, 479 U.S. 462 (1987), the court reaffirmed that a city that acts with a racially discriminatory policy in effecting changes to its boundaries through annexation could be found under Section 5 to have acted with an impermissible racially discriminatory purpose to minimize future minority voting strength within the city.

The Court in Bossier explained "our holding today does not extend to violations consisting of an outright 'denial' of an individual's right to vote, as opposed to an 'abridgement' as in dilution cases." Bossier, at n.6. While the Court had no

occasion to define fully the parameters of the "purpose of denying the right to vote," its reference to Gomillion v. Lightfoot, 364 U.S. 339 (1960), which involved the deannexation of virtually all minority voters from the City of Tuskegee, is instructive. See Bossier, at 875 n.3 (describing the city's actions as "deny[ing] black voters the right to vote in municipal elections"). See also Rice v. Cayetano, 120 S. Ct. 1044 (2000), a case challenging the limitation of the franchise for certain positions to persons of Hawaiian ancestry. In finding unconstitutional the restriction at issue in Cayetano, the Supreme Court reviewed the language of the Fifteenth Amendment as historically interpreted by the Court. Among the "[m]anipulative devices and practices . . . employed to deny the vote to blacks" the court (at 1054-55) referred to "racial gerrymandering" (citing Gomillion v. Lightfoot, 364 U.S. 339 (1960)) (emphasis added).

Our reexamination of the record in this matter, in light of the principles set out in Bossier, leads us to the conclusion that our July 16, 1999, objection to the city's deannexation is consistent with the Supreme Court's holding in Bossier, given the city's failure to demonstrate that the deannexation was not motivated in significant part by a desire to exclude from the city potential minority residents and, thereby, deny these future residents the right to vote in city elections. Nor has the city shown that its actions did not also have the purpose to minimize future minority voting strength within the city.

In light of these considerations, I remain unable to conclude that the City of Lamesa has carried its burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the deannexation in question.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in

effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Lamesa plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153). Special Section 5 Counsel in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

cc: Mr. Robert Gorsline